IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1937 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NAVSARI DISTRICT PANCHAYAT

Versus

SUMANBHAI MORARBHAI PATEL

Appearance:

1. Special Civil Application No. 1937 of 2002

M/S MG DOSHIT & CO for Petitioner No. 1-2

MR KALPESH M PANDIT for Respondent No. 1

MR HD DAVE ASSTT GOVT PLEADER for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/04/2002

ORAL JUDGEMENT

#. Heard Mr.M.G.Doshit, learned advocate appearing on behalf of the petitioner and Mr.K.M.Pandit, learned advocate for respondent No.1 - workman as well as Mr.H.D. Dave, learned AGP for respondent No.2.

#. The petitioner has challenged the award dated 28th January, 2000 passed by the Labour Court, Navsari in Reference [LCN] No.28/ 1985 wherein, the labour court has set aside the termination order and granted reinstatement with continuity of service with 50 % backwages of interim period. Learned advocate Mr.Doshit on behalf of the petitioner has mainly raised two contentions before this Court. The first contention is the Panchayat is sovereign function of the State and therefore, Industrial Disputes Act is not applicable to the petitioner. The second contention is that the respondent workman has an alternative effective statutory remedy of an Appeal available under the provisions of Section 11 of the Gujarat Civil Services Tribunal Act, 1972 but the workman has not availed such remedy and therefore, the Reference is bad and the Labour Court has committed gross error in passing such award which is without jurisdiction. Mr.Doshit, learned advocate has also relied on the decision of the Apex Court, wherein the Forest Department has not been considered as an industry but the function of the Forest Department is considered to be sovereign of the State.

#. Learned advocate Mr.Pandit on behalf of the respondent workman has submitted that initially the respondent workman was working in Health Department with the District Panchayat Valsad but later on when the Reference was raised, he was working with the Navsari District Panchayat. Mr.Pandit, learned advocate has relied on the decision of the Apex Court in case of Nagpur Corporation vs. Its Employees reported in AIR 1960 SC 675, wherein the Apex Court has held that Department of Panchayat is an industry and the provisions of the Industrial Dispute Act, 1947 are applicable to the Panchayat and therefore, Mr.Pandit submits that even for the Health Department of the District Panchayat, the provisions of the I.D.Act would be applicable and therefore, the award passed by the labour court, impugned in this petition is just and proper and there requires no interference by this Court while exercising the powers under Article 226 and 227 of the Constitution of India.

#. I have considered submissions of the learned advocates for the parties. Before the Labour Court, the respondent workman has filed statement of claim, wherein it was mentioned that the respondent workman was working with the petitioner with effect from 2nd January, 1981 and performing his duties as Vaccinator in Family Planning and Malaria department. Thereafter, his services were terminated on 1st December, 1983 but at the

time of terminating services of the respondent, the petitioner has not complied with the provisions of Section 25-F of the Industrial Disputes Act, 1947 and no notice as given and no pay was given and therefore, termination order is bad and illegal. The workman has stated that during the interim period, he remained unemployed and therefore, he made prayer before labour court that termination order is required to be set aside and he may be reinstated with full backwages. Thereafter, the petitioner has filed written statement vide Exh.5. The respondent workman has produced certain documents at Exh.8 and affidavit of respondent workman in support of the statement of claim also filed by the respondent workman. Initially, after affidavit of the respondent workman vide Exh.10, vide the labour court has passed order below Exh.11 which was challenged by the petitioner by preferring Special Civil Application No.3706 / 1986, wherein this Court has remanded the matter back to the labour court concerned. Thereafter, again the labour court has issued notices to the parties and the petitioner had appeared before the labour court. Thereafter, vide Exh.15 further reply has been filed by the petitioner and raised contention that post of Vaccinator is skilled worker and the workman is not covered under the definition of the workman under Section 2[s] of the Industrial Disputes Act, 1947. The respondent is not qualified to the post of Vaccinator and he was appointed in the post adhoc as per the instructions issued by the State Government for particular period and therefore, after completion of the said period, his services came to an end automatically. That the workman was appointed from 1st January, 1981 for period of two months only and thereafter, he was continued upto 30th April, 1982 and he was terminated on 30th April, 1982. Thereafter, again workman applied on 29th April, 1982 and he was appointed in July, 1982 for temporary period for one month. Thereafter, the petitioner has produced documents vide Exh.16 and raised preliminary issue in regard to jurisdiction of the labour Court. The petitioner has raised some other contentions before the labour court to the effect that the labour court is not having jurisdiction of the provisions made in Gujarat Civil Service Tribunal Act, 1972. Therefore, the labour court had sent the papers to the Service Tribunal. But the Service Tribunal has transferred the matter back to the labour court. Therefore, no order has been passed by the labour court on such application which was filed by the petitioner. Once the tribunal has sent the papers back to the labour court, this fact reflects that the Tribunal has no jurisdiction to try the matter in respect of the present mater. Thereafter, again the

labour court had issued notice vide Exh.18 and 23 and on being served the notice, the petitioner vide Exh.25 filed purshis that they do not to lead any oral evidence before the labour court. Thereafter, the workman has also filed purshis that the workman does not want to lead any oral evidence before the labour court. Thereafter, the award passed by the labour court at Exh.28. Notice was thereafter issued by the labour court again to the parties and the respondent workman has produced certain documents vide Exh.34 and vide Exh.38 the petitioner has produced documentary evidence and vide Exh.39 again the respondent workman has produced certain documents. The respondent workman was examined thereafter vide Exh.42. The date of birth of the respondent workman was 15th July, 1957 and certificate given by the Valsad District Panchayat produced at Exh.8/3. The workman also produced certain documents relating resuming duties and relevant records and correspondence between the petitioner and respondent workman. The respondent workman has deposed before the labour court that he remained unemployed during interim period and at present also he is unemployed and further deposed that if the petitioner is prepared to reinstate the respondent workman, he is ready and willing to resume the duties. The workman has also deposed before the labour court that the work which was performed by the respondent was of permanent nature and at present said work is continue and establishment is also in existence. However, the workman disputed that he was Civil Servant while working with the Panchayat. The workman also admits that he was appointed on ad hoc basis and on that condition he was appointed. The respondent workman was appointed on 28th February, 1981 and he remained in service upto 31st April, 1982 and he was relieved on 1st May, 1982. The workman has also admitted that he was not selected employee by the Panchayat but he disputed that he was not qualified for the post in question. That he has not passed examination of Sanitary Inspector. The workman has produced appointment orders on record before the labour court and certificate of physical fitness before the Labour Court. The petitioner has examined one witness Suleman Chhibubhai Khalipha vide Exh.86. Said witness has deposed that he was working since last 31 years and he knows the respondent and the respondent workman was appointed on adhoc post for the period of two months and three months but he was not qualified for the post in question and he has not worked continuously on the post in question. It is also deposed that he has worked periodically with Panchayat and his services were terminated on 1st May, 1982 and he was not workman within meaning of Section 2[s] of the I.D.Act. That the workman has not passed examination of Sanitary

Inspector nor he has undergone any training for work of Vaccinator. He also deposed that to appoint any person permanently, such powers are with the district Panchayat and the respondent workman was not selected by the District Panchayat. He also disputed the fact that the respondent workman has worked upto November, 1983. Thereafter, closure purshis was given by the parties and ultimately the matter was decided by the labour court on merits. The labour court had also framed important issues that whether the workman has completed 240 days continues service with the petitioner or not and the second issue whether the provisions of the Industrial Disputes Act, 1947 have been complied with in case of the petitioner or not ?

#. The Labour Court has considered that the respondent workman was working with the petitioner for period from 1st January, 1981 to 30th April, 1982 as per certificate Exh.57. This fact has been proved by the respondent by producing certificate Exh.57. Thereafter, Exh.85 the respondent workman was appointed in July, 1982 for period of one month and copy of the said letter has been quoted in the award and considered by the labour court. Considering the said letter dated 20th December, 1997 written by the Gujarat Panchayat Selection Committee addressed to the Selection Committee, Panchayat Officer, Mehsana, the labour court has come to the conclusion that the respondent workman was qualified for the post of Vaccinator and therefore, the labour court has come to the conclusion that the petitioner has appointed respondent workman on the basis of the qualification possessed by the respondent workman. The labour court has further discussed that considering the documents at Exh.42, the workman remained continued upto August, 1983 but no submissions made by the either side in respect of document Exh.49 before the labour court. Therefore, the labour court on the basis of the documents produced before the labour court has considered that the workman had worked for period from 1st January, 1982 to 30th April, 1982. Considering the document produced at Exh.57, the labour court has come to the conclusion that the respondent workman had completed 240 continuous service from 1st January, 1982 to 30th April, 1982 and therefore, before terminating services of the respondent workman, provisions of Section 25-F were requires to be followed by the petitioner. The labour court has also quoted the order of termination which is at Exh.83 issued against the respondent workman letter dated 30th April, 1982. This letter has also quoted in award which shows that the District Panchayat Health Officer addressed a letter to the respondent workman that the respondent

workman was appointed as Vaccinator at Siyoda Primary Health Center, Khadsupa but his services now need not require and therefore same is terminated by the District Health Officer. On the basis of this fact, the labour court has come to the conclusion that the respondent workman has completed 240 days continues service and considering the deposition of Suleman Chhibubhai Khalifa vide Exh.86, wherein the witness has admitted that in Primary Health Centre, in all forty workmen were working and before terminating services of the respondent workman, Section 25-F has not been complied with by the petitioner. The labour court has also come to the conclusion that no doubt service of the respondent workman was terminated on 30th April, 1982 but looking to the memo issued to the respondent workman vide Exh.49, there was some presumption must have to be drawn against the petitioner and the respondent workman has worked upto 1983. The labour court has also considered the correspondence between the petitioner and the respondent which was produced before the labour court at Exh.50 and 54. However, against said correspondence, the petitioner has not given any reply to the respondent workman. The witness of the petitioner has also admitted that at the time of terminating services of the respondent, no salary nor any retrenchment compensation was paid to the respondent workman and even no notice was given or no notice was given to the respondent workman. Therefore, the labour court has come to the conclusion that the petitioner has violated provisions of Section 25-F of the Industrial Disputes Act, 1947. Thereafter, the labour court has considered the question of backwages and considering the fact that the petitioner is depend upon the Government grant and the present Reference is pending before the labour court since long time and one more fact that the petitioner has asked for number of adjournments in present Reference. Thus, considering all these aspects on the issue of grant of backwages, the labour court has thought it fit to grant 50 % backwages of the interim period.

#. So far the challenge against the award impugned in this petition before this Court, Mr.Doshit, learned advocate for the petitioner has mainly raised two contentions only. So far the first contention is the Panchayat is sovereign function of the State and therefore, Industrial Disputes Act is not applicable to the petitioner. It is also contended that the Panchayat service is not covered by the definition of an industry as provided under Section 2[j] of the I.D.Act, 1947. To examine this contention, the averments made by the petitioner in the written statement filed before the

labour Court requires to be considered. Before the labour court, written statement was filed by the petitioner at Exh.15. However, it is pertinent to note that in written statement, no such contention was raised by the petitioner before the labour court that Panchayat Service is not covered under definition of an industry under Section 2[j] of the Act. Not only this, but this contention was not raised in the submissions before the labour court by the petitioner. Therefore, obviously the labour court has not decided this question which was admittedly not raised before the labour court. However, only one contention was raised before the labour court that the respondent workman was not the workman within the meaning of Section 2[s] of the I.D.Act. On the contrary, in reply the petitioner admitted that the post of Vaccinator is post of skilled workman. But considering the provisions of the law itself, the the post in question which is meant for skilled workman itself suggests that the post of Vaccinator was covered under the definition of the workman. Moreover, the witness of the petitioner who was examined before the labour court, has in his deposition has deposed that the workman was not having any managerial powers or supervisory capacity while working as Vaccinator. However, no such statement was made on oath by the witness of the petitioner before the labour court. Merely raising the contention in written statement cannot be considered as an evidence but such contention ought to have been substantiated by the record or documentary evidence. Therefore, when the witness of the petitioner has not deposed before the labour court to the effect that the respondent workman was having some managerial power and supervisory capacity or because of the salary ceiling, he was out side the scope of Section 2[s] of the Act. Thus, no such evidence was led and produced before the labour court by the petitioner. Therefore, the labour court has rightly considered that the respondent was workman within the meaning of Section 2[s] of the I.D.Act. However, this aspect has been examined by the Apex Court in case of NAGPUR CORPORATION V. ITS EMPLOYEES reported in AIR 1960 SC 675. Relevant observations wherein the Health Department has been considered as an Industry of the Panchayat Service, made in para-9 of this judgment, are reproduced as follows :

> "[9] Let us scrutinize the definition of "industry" to ascertain whether all or some of the conditions are implicit in the definition and whether the said conditions constitute the necessary basis for it. The true meaning of the section must be gathered from the expressed

intention of the Legislature. Maxwell in his book "on the Interpretation of Statutes," 10th Edn., rightly points out at p.2 that "if the word of the statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature.". The words used in the section are clear and unambiguous and they prima facie are of the widest import. We have pointed out that the section is in two parts : Cl [a] defines "industry " with reference to employers and Cl.[b] defines it with reference to employees. Clause [c] extends the definition to any branchy of an industry or a group of industries, i.e. industries coming within the definition of cls [a] and [b]. It is said that in construing the definition we must adopt the rule of construction noscuntur a sociis. Maxwell explains this doctrine at pg.332 thus :

"When two or more words which are susceptible of analogous meaning are coupled together noscuntur a sociis. They are understood to be used in thier cognate sense. They take, as it were, their colour from each other, that is, the more general is restricted to a sense analogous to the less general."

On the basis of this doctrine, it is argued that the words following the words any business, trade, manufacturing or mining undertaking" shall partake the characteristics of any business, trade, manufacturing or mining undertaking and the words "any calling, service, employment, handicraft or industrial occupation or avocation of employees" shall share the qualities of an industrial occupation or avocation. In other words, the general word "calling service etc." in Cl.[b] are restricted by the succeeding words "industrial occupation or avocation. This doctrine was dealt with by this Court in AIR 1960 SC 610. Therein this Court has considered the scope of this doctrine and has observed thus :

"It must be borne in mind that noscuntur a sociis is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the

intention of the Legislature in associating wider words with words of narrower significance is doubtful that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but where the object of the Legislature in using wider words is clear and free of ambiguity; the rule of construction in question cannot be pressed into service."

The said doctrine, therefore, cannot be invoked in cases where the intention of the legislature is clear and free of ambiguity. The phraseology used in the section is very clear and it is not susceptible of any ambiguity. The words used in the first part of Cl.[b] are unqualified; and the qualification is introduced only in the later part. If the words "calling, service, employment, handicraft" are really intended to be qualified by the adjective "industrial", one should expect the Legislature to affix the adjective to the first word "calling" rather than to the last word "occupation". The inclusive definition is a well recognized device to enlarge the meaning of the word "industry" must be construed as comprehending not only such things as it signifies according to its natural import but also those things the definition declares that it should include; see Stroud's Judicial Dictionary, Vol.2 p. 1416. So construed, every calling, serving, employment of an employee or any business, trade or calling of an employer will be an industry. But such a wide meaning appears to be overreach the objects for which the Act was passed. It is therefore necessary to limit its scope on permissible grounds, having regard to the aim, scope and the object of the whole Act. To arrive at the real meaning of the words, Lord Coke in Heydon's case [1584] 7 Co Rep 7a says that the following matters are to be considered. [1] What was the law before the Act was passed; [2] What was the mischief or derect for which the law had not provided [3] What remedy Parliament has appointed and [4] The reason of the remedy. The word "employers" kin cl.[a] and the word "employees" in Cl.[b] indicate that the fundamental basis for the application of the definition is the existence of that relationship. The cognate definitions of "industrial dispute", "employer," "employee" also support it. The long title of the Act as well as

its preamble show that the Act was passed to make provisions for the promotion of industries and peaceful and amicable settlement of disputes between employers and employees in an organized activity by conciliation and arbitration and for certain other purposes. If the preamble is read with the historical background for the passing of the Act, it is manifest that the Act was introduced as an important step in achieving social justice. The Act seeks to ameliorate the service conditions of the workers, to provide a machinery for resolving their conflicts and to encourage cooperative effort in the service of the community. The history of labour legislation both in England and India also shows that it was aimed more to ameliorate the conditions of service of the labour in organized activities than to anything else. The Act was not intended to reach the personal services which do not depend upon the employment of a labour force."

In a very decision, the Apex Court has considered each of the departments of the Corporation held by the State Industrial Court to be governed by the Act including "Health Department" in para 20[ix]. The relevant observations are quoted as under :-

"[ix] Health Department : This department looks after scavenging, sanitation, control of epidemics, control of food adulteration and running of public dispensaries. Private institutions can also render these serves. It is said that the control of food adulteration and the control of epidemics cannot be done by private individuals and institutions. We do not see why. There can be private medical units to help in the control of food adulteration and in the control of epidemics for remuneration. Individuals may get the food articles purchased by them examined by the medial unit and take necessary action against guilty merchants. So too, they can take advantage of such a unit to prevent epidemics by having necessary inocultations and advice. This department also satisfies the other test laid down by us, and is an industry within the meaning of definition of "industry" in the Act."

#. The view expressed by the Apex Court in case of THE CORPORATION OF CITY OF NAGPUR as referred has been taken into account subsequently by a seven Judge Bench of the

Apex Court in case of BANGALORE WATER SUPPLY AND SEWERAGE BOARD ETC. VS. A. RAJAPPA AND OTHER ETC. reported in 1978 [1] LLJ pg.349. The relevant observations made by the Apex Court are reproduced as under :

"The main judgment laid down the following principles, saying while they are authoritative they are not exhaustive :

Industry, as defined in Section 2[j] and explained in Banerji's case has a wide import.

[I] [a] Where (i) systematic activity; (ii) organised by co-operation between employer and employee [the direct and substantial element is commercial]; [iii] for the production and / or distribution of goods and services calculated to satisfy human wants and wishes [not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale of [prasad or food] prima facie, there is an industry in that enterprise.

[b] Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint or private or other sector.

[c] The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer - employee relations.

[d] If the organisation is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.

II. Although S.2[j] uses words of the widest amplitude in its two libs, their meaning cannot be magnified to over reach itself.

"Undertaking" must suffer a contextual and associational shrinkage as explained in Banereji's case and in this judgment, so also service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I [supra] although not trade or business, may still be "industry" provided the nature of the activity, viz. the employer - employee as is bears resemblance to what we find in trade or business. This takes into the fold of "industry" undertakings,

callings and service adventures, analogous to the carrying on of trade or business. All features other than the methodology of carrying on the activity, viz. in organising the cooperation between employer and employee may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivating for resultant economic operation. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workman - the statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

[a] The consequences are [i] professions [ii] clubs; [iii] educational institutions [iv] cooperative [v] research institutes [vi] charitable projects and [vii] other kindred adventure, if they fulfil the triple test listed in I [supra] cannot be exempted from the scope of Section 2[j].

[b] A restricted category of professions, clubs, cooperatives and even gurukulas and little research labs, may qualify for exemption if in simple ventures substantially and going by the dominant nature criterion substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non employee character of the unit.

[c] If in a pious or altruist mission many employ themselves, free of for small honorarium, such as lawyers volunteering to run a free legal service clinic or doctors serving in their sparehours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like personality and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship then the institution is not an industry, even if stray servants, manual or technical, are hired. Such undertakings alone are exempt - not other generosity, compassion, developmental passion or project.

IV. The Dominant Nature Test.

[a] Where a complex of activities, some of which qualify for exemption, others not, involves employes of the total undertaking, some of whom are not "workmen" as in Delhi University case or some departments are not productive of goods and services if isolated, even then,. the predominant nature of the services and the integrated nature of the departments as explained in the Nagpur Corporation case will be the true test. The whole undertaking will be "industry" although those who are not "workman" by definition may not benefit by the statute.

[b] Notwithstanding the previous clauses, sovereign functions, strictly understood, alone qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies.

[c] Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severably, then they can be considered to come within S.2[j].

[d] Constitutional and competently enacted legislative provisions may well remove from the scope of the Act."

The decision of the Apex Court in case of BANGALORS WATER SUPPLY V. A. RAJAPPA, a Reference made by a two Judge Bench of the Court in reported decision 1998 [3] SCC pg.259 to the Hon'ble the Chief Justice of the Supreme Court of India in case of COIR BOARD ERNAKULAM KARLA STATE AND ANOTHER VS. INDIRA DEVAI P.S. AND OTHERS which is reported in 2000 SCC [L & S] 120. Relevant observations made in para-1 & 2 are as under :

"1. We have considered the order made in Civil Appeals Nos.1720-21 of 1990. The judgment in Bangalore Water Supply & Sewerage Board V. A. Rajappa was delivered almost two decades ago and the law has since been amended pursuant to that judgment though the date of enforcement of the amendment has not been notified.

2. The judgment delivered by seven learned Judges of this Court in Bangalore Water Supply

case does not, in our opinion, require any reconsideration on a reference being made by two Judge Bench of this Court, which is bound by the judgment of the larger Bench."

In view of the decision as referred above, the Apex Court has come to the conclusion that said decision of the Bangalore Water Supply and Sewerage Board does not require reconsideration on Reference being made by the two Judge of the Apex Court which is bound by the judgment of the Larger Bench.

#. Considering the decision of the Apex Court in case of BANGALORE WATER SUPPLY, Panchayat Services rendering to the public is covered as Industry within meaning of Section 2[j] or not, is also examined by the Bombay High Court in case of MUNICIPAL COUNCIL WASHIM V. MANGUJI ZENDUJI DHAMANE reported in 1978 Lab.I.C. 881. Relevant observations made in the aforesaid judgment in para-18 are quoted as under :-

"18. If the ratio laid down by the Supreme Court in this decision is applied to the present case, it is quite Conservancy and Sanitation Department can be regarded as an undertaking analogous to trade or business. The conservancy and the sanitary department is organized or arranged in a manner in which trade or business is generally organized or arranged. It is not merely a casual undertaking. The success of this undertaking depends upon co-operation between the employer and employee who associate together with a view to render material services to the public. As observed by the Supreme Court, it is not necessary that the employer must always be a private individual because the Act in dispute where the Government or local authority or a public utility service may be an employer. It also makes no difference that the material services rendered by the undertaking are in public interest. Further the concept of public interest in modern State, where new social values are fast emerging and old dying out is indeed so wide and so broad and comprehensive in its spectrum and range that many activities which admittedly fall within the category of `industry' are clearly designed to subserver public interest. It cannot be disputed, nor it is disputed before us, that the services rendered by the Conservancy and Sanitary Department are obviously in public interest they render material

> services to the community. In this view of the matter, in our opinion, applying the test laid down by the Supreme Court in the latest decision in Workmen, I.S. Institution v. I.S. Institution, [AIR 1976 SC 145] : [1976 Lab IC 137] and in the Management of Safdarjung Hospital v. Kuldip Singh [AIR 1970 SC 1407] : [1970 Lab IC 1172] it will have to be held that the activities carried on by the Sanitary and Conservancy Department of the Municipal Council is an `industry' within the meaning of the said term as defined in the Industrial Disputes Act, 1947. In the view which we have taken, therefore, the labour court was right in coming to the conclusion that the applications filed by the respondents employees are maintainable and it has jurisdiction to entertain and decide the said applications."

#. In view of above observations of the Apex Court that Health Department is covered under the definition of Industry under the provisions of Section 2[j] of the Act, therefore, according to my opinion, the contention raised by the petitioner that the respondent workman is not workman under the provisions of I.D.Act does not find worth acceptable. Therefore, the labour court has rightly decided the issue and passed the order in favour of the respondent workman.

#. So far the second contention is concerned that the respondent workman has an alternative effective statutory remedy of an Appeal available under the provisions of Section 11 of the Gujarat Civil Services Tribunal Act, 1972 but the workman has not availed such remedy and therefore, the Reference is bad and the Labour Court has committed gross error in passing such award which is without jurisdiction, it is noticed that in response to the application submitted by the petitioner, the labour court had sent the papers of the Reference to the Tribunal but the Tribunal has not decided the matter and ultimately sent the papers back to the labour court on the ground that the tribunal is not having jurisdiction to try such matter. Thereafter, the labour court has examined the matter on merits. Therefore, when the tribunal had sent back the papers to the labour court, at that time, the petitioner has not challenged the action of the tribunal before the higher forum, meaning thereby the the petitioner has accepted such legal position to the effect that the tribunal has no jurisdiction once the papers were sent back to the labour court. Therefore, this second contention is also not worth accepting. Even

otherwise, this contention also cannot be accepted on the basis of the fact that very contention was raised by the petitioner before the labour court and on the basis of such request, papers were sent to the tribunal but same were again sent back to the labour court by the tribunal for adjudication. It is also reiterated that this decision was not challenged by the petitioner before higher forum and therefore, for this reason also this contention is not accepted by this Court.

#. Thus, considering the all these aspects of the matter and the fact that before the labour court, the period of total service of the respondent workman stand proved from 1st January, 1981 to 30th April, 1982 as per Exh.57 and accordingly, it was proved before the labour court that the workman had completed 240 days continuous service and the certificate at Exh. 57 has not been disputed by the petitioner. It is also undisputed before the labour court that at the time of termination, the petitioner has not complied with provisions of Section 25-F of the I.D.Act. This fact has also been admitted by the witness of the petitioner. Therefore, the labour court has rightly come the conclusion that the termination order passed against the respondent is contrary to the provisions of Section 25-F of the I.D. Act, 1947 and as a result thereof, granted reinstatement with continuity of service. However, the labour court has well appreciated the issue of backwages keeping in mind pendency of the Reference before the labour court. The petitioner is after all public body and depends upon grant from the Government. The Labour Court has also considered that Reference is of the year 1985 and therefore, considering all these aspects of the matter, granted only 50 % back wages of the interim period, which in my opinion, the labour court has not committed any error and same does not call for any interference by this Court. It is also observed that Mr.Doshit, learned advocate for the petitioner has also failed to point out any other error apparent on the face of the record, nor made any other submission before this Court except these two submissions dealt with hereinabove.

##. Before parting with this judgment, it cannot be ignored that this Court has very limited jurisdiction while examining the award passed by the labour court or the Industrial Tribunal while exercising the powers under Article 226 and 227 of the Constitution of India. However, it is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court. The view taken by the Apex Court in Indian Overseas Bank

v. I.O.B. Staff Canteen Workers' Union and Another reported in 2000 SCC [Labour and Service] pg.471, the Apex Court has held that while exercising the powers under Article 226 and 227 of the Constitution, interference with pure finding of fact and Reappreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Article 226. Even insufficiency of evidence or that another view is possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has considered this aspect in case of SUGARBAI M. SIDDIQ AND OTHERS V. RAMESH S. HANDKARE reported in 2001 [8] SCC pg.477, the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower court / tribunal but with its decision-making process. High Court must ascertain whether such Court or tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise, not.

##. In view of above discussion and considering the observations of the Apex Court in aforesaid decisions referred above and looking to the finding recorded by the labour court on the basis of the evidence led by the parties before the labour court, according to my opinion, the labour court has not committed any jurisdictional error, nor committed any procedural irregularity committed by the labour court while passing such award. Therefore, this court cannot reappreciate the evidence which was appreciated by the labour court, in view of this Court, the labour court has rightly appreciated the evidence and hence, no such error has been committed by the labour court. Therefore, there is no substance in the petition which requires rejection and it is ordered accordingly. This petition, accordingly stands rejected. Rule discharged. No order as to costs.

Date : 12-4-2002 [H.K.Rathod, J.]

#kailash#